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A
L E T T E R

To the HONOURABLE
Sir Thomas Drury, High-Sheriff;



The HONOURABLE
Sir EDMUND ISHAM,
AND

VALENTINE KNIGHTLEY, Esq;
KNIGHTS of the SHIRE;

AND TO
The GENTLEMEN of the County of *Northampton*:

INTRODUCTORY TO
An ACCOUNT of STUBBORN FACTS concerning the
ABSOLUTE PROPRIETY of Mr. *Freeman's*
FOUNDATION in *Clare-Hall*, of Two Fellowships of
Forty Pounds *per Annum*, and of Eight Scholarships of
Six Pounds Ten Shillings *per Annum* each:

AND CONCERNING
The Rev. Dr. *Wilcox* the Master, and the Fellows Denial of
the said PROPRIETY; the Defending the said Denial, by
denying the Jurisdiction of the Vice-Chancellor of *Cambridge*
as Visitor; and afterwards pleading his Jurisdiction against all
the Courts in *Westminster-Hall*.

EXTRACTED FROM
The FOUNDER'S WILL; a Deed of Indenture betwixt his
Executors and the Master, Fellows and Scholars then being; an
original Affidavit in a Court of Record; Letters from four
Vice-Chancellors; and the College's Answer to an Information
against the Master and Fellows of it.

Publisk'd by JOHN MAPLETOFT, *sometime Fellow of*
Clare-Hall.

Printed for the AUTHOR, in the Year 1748.

*Extracted from the Registry of the Prerogative
Court of Canterbury.*

IN the Testament, or Last Will of *John Freeman*, late of *Great-Billing*, in the County of *Northampton*, Esquire, deceased, bearing Date the twenty-fifth Day of *February*, and in the twelfth Year of the Reign of our late Sovereign Lord King *JAMES* the First, now remaining in the Registry of the said Court, amongst other Things therein contained, is as follows, to wit,

Item, I will, that the Sum of Two Thousand Pounds be laid forth by my Executors, for the purchasing of One Hundred Pounds Lands of Inheritance, the Rents and Profits of which said Hundred Pounds Lands per Annum shall be employed and distributed towards the Relief and Maintenance of ten poor Schollers in the University of Cambridge, at or in the House or College called *Clare-Hall*, in the said University, for ever, viz. For two Fellows there to be placed by my Foundation, Twenty-six Pounds a Piece, and for eight Schollers five Pounds a Piece, by the Year; my Kinsmen, if any be, to be there first prefer'd, and then next to them those that are born in the County of *Northampton*, and next them those that are born within the County of *Lincoln*, that shall be fitt for the same; the further Perfecting whereof I leave to my said Executors, charging them, as they will answer before God, that they perform the same within one Year next after my Decease; and do intreat my Overseers, to cause my Executors to do it, and see that the same be performed according to my true Will and Meaning.

A LETTER to the Honourable Sir Thomas Drury, High-Sheriff; the Honourable Sir Edmund Ilham, and Valentine Knightley, Esq; Knights of the Shire; and to the Gentlemen of the County of Northampton.

Mr. HIGH-SHERIFF, and GENTLEMEN,

THERE have been Controversies laid before the Publick, concerning College Disputes, relating only to themselves; concerning the Distribution of Power, or of the Revenues of the College, among one another. But what is here laid before you, relates to the Power of an unanimous Society of a Master and Fellows, with respect to those to be chosen into their Society, and to the Distribution of their Revenues according to the Will of a Founder, and a Deed of Indenture betwixt his Executors, and the Master and Fellows then being. And all born in the County, of whose Rights you are the Proper Guardians, Protectors and Defenders, are interested in it.

This Injury, happening to be done to my Son, it furnished me with Resentment; and the Duty of my Relation and my Knowledge of Him and of his Right, seemed to myself, to lay me under an Obligation to vindicate his Character and to assert the Right, I was sure he had, in common with all born in this County. If this had not been done, the Right itself would at least have been endanger'd, for no future Elections, could have repair'd the Injury that had been done

to it, by denying it to him, and by having done so, to all for twenty Years together before. And if Justice is not done to the present Party, the Injury done to the Right can never be repaired, and it is questionable, whether it can ever hereafter be brought to an Hearing.

The General Right, was made particular to my Son, by his being nominated alone, of all the Countymen, and put in Competition for one of these Fellowships; the Injury hereby became Personal, and He has a Right to complain. But as no one had been so nominated for twenty Years before, or put in Competition, so in an Election made since on this Foundation, the College has resumed their old Practice, of not nominating Countymen, not suffering them to be Competitors, and so they may always hereafter do, and then no Scholar would have a Personal Complaint of a Personal Injury, and without it, I do not know whether He could complain or appeal; and it is certain He could not do it with so much Advantage. It seems to follow from hence that this Cause must be now tryed, in the Name of the present Party to it, or the Right be greatly endanger'd, if not for ever lost.

What Pains I have taken in this Matter, the following Papers will best testify. And if I had kept an exact Account, of every Expence, in the Course of four Years, I doubt not I should have been able to have proved I have expended 100l. or near it, *de Proprio*, or it may be more, for some Expences already incurr'd, are as yet uncertain.

My Son, Gentlemen, did not lay hold of this County Right, to entitle himself, to what He was not fit for, or worthy of. It was not denied to him, on any such Pretence, or on account of any Personal Prejudice to him, but the Right itself was denied. And if it had not been for this
Right,

Right, my Son would not have been a Candidate for the Fellowship; and for asserting this Right, He forfeited the Favour of the Society, and all Hopes of any Preferment in it. And to justify their denying this Right they were under a Necessity, if they would be consistent with themselves, of even disparaging his Character, which the preferring another before him alone, was enough to do. This it became me to take care to prevent; and I have done it by proving the Certainty of the Right, and the Resolution in the College, to deny it. I have therefore fairly done, all that any ways lyes upon me; and both Father and Son have paid dear enough for their Knowledge of the Matter which can do Them no Good, but may be of perpetual Service and Benefit to many of this County.

The Generous Assistance I have received from many of you (and I must add with the greatest Sense of Gratitude, and Honour, done to myself, whom they condescend so to ed regard) from some of the Greatest of the Nobility of this County, will not allow me to believe, you will suffer such a Benefaction to the County to be lost. There needs only a little more of the same excellent Spirit, to promote the Publick Good, to recover and secure for ever this Right. Besides the Loss of a very valuable Right, it would be the greatest Indignity, that has ever been put upon a Munificent Gentleman, the greatest Discouragement to a Publick Spirit, and Encouragement to such Unfaithfulness in the Discharge of a Trust; and a strange Contempt of University Preferment, never thought below the Acceptance of the best of the Gentry, bred to the Learned Professions, always esteemed an Ornament to them, and a great Assistance in Education to the Sons of Clergymen, and often a means of bringing them into, and raising them in the World; and the more of these

these, are Fellows of Colleges, the better it will be for those Places and the Publick.

This, Gentlemen, is the Account of this Matter, as it stands with respect to the County and myself. How it stands with respect to the College, the following Account will best inform you. It is extracted from such attested Copies of Originals as I should be glad to put into the Hands of any Person, you shall appoint for that Purpose.

I should think it a great Honour and Happiness, to find my Endeavours to serve the Interest of the County, receive your Countenance and Approbation, and to have so much Reason to subscribe myself,

Mr. High-Sheriff, and Gentlemen,

Your most Obliged,

and most Obedient Servant,

Broughton,
10th of July, 1748.

JOHN MAPLETOFT.

An Account of STUBBORN FACTS, &c.

THE Reader needs only to peruse the Account of the following Extracts, in the Order they lie, to enable Him to pass a Judgment, upon the Subject Matter of them.

1. The Words of the Will are so clear, and express, The Charge to the Executors so Solemn, and Awfull, The Testator's Care to intreat his Overseers to see the Trust discharged, is so remarkable, that there can be no Doubt made of his True Intent and Meaning.

The Master and Fellows are so sensible of these Things, that to evade the Force of Them, in their Answer under the College Seal, to the Information against them, they say as follows,

“ They know not, but believe, that the said *John Freeman* made his last Will in Writing, and such Executors, but of what Date, or whether to that Effect, they know not, having not the said Will, or any Copy of it in their Custody.” They farther say----

“ But if such Will there is, or was, they believe, that the then Master and Fellows did not accept the Benefaction given by the said Will upon the Terms; for if they had accepted it under such Will, the Will, or Copy of it, or Extract would have been found in the Registry; and therefore they believe their Predecessors accepted it of the Executors, according to the Deed, and no otherwise.”

The

The Facts here alledged, are in themselves very suspicious and are certainly false. The Affidavit, hereafter to be mentioned, is a Proof of the Present Master's having known the Will, the Date of it, and to what Effect; and it has been seen in the College Registry since this Cause began. But the Question is, of what their Predecessors did and knew. Did not they know the Will? And did they and the Executors agree there should be no Copy, or Extract of it in the College Registry?

2. The Deed, the Original of which, the College say they have lost, but was enrolled in Chancery, from whence an attested Copy has been obtained, and under which, the College pretend their Predecessors accepted the Benefaction of the Executors, and not under the Will of which they were the Executors, is as full a Proof against the College, as the Will itself, and contains some Things, which are a fuller Proof of the College's Acceptance under the Will, than the Will itself could be.

The Lands purchased by the Executors, are conveyed under a Lease for Sixty Years, at 140 l. *per Annum*, and the Over-plus not appropriated by the Testator, is allowed to the College Use; which shews what Reason the College had to accept the Benefaction, which cannot appear by the Will.

The Master and Fellows have moreover to their own proper Use, the Absent Fellows Weekly Allowance for Commons, at the Rate of about Sixteen Pounds *per Annum*; and the whole Allowance to the Scholars every Week of their Absence, which is very considerable. There is no Doubt but the Dead and Living College together, have above Half, what the Founder provided for his two Fellows and Eight Scholars; and probably Half of the Rents of the Lands

Lands purchased. This indeed the College does gain, by accepting the Benefaction under the Deed. And it is a very good Reason for their Accepting it under the Will; and is a Proof they would never scruple doing it, on Account of the Condition of the Propriety.

As Mr. *Freeman's* Fellows are obliged to bear a Share in all common Burthens, they are entitled to all College Places and Offices, which falling to the Share of the Resident once in two Years, make these Fellowships with the Rent of a Chamber, now six Pounds *per Annum*, worth 40l. *per Annum* to the Resident.

The Clause in this Deed, ready to be produced, for the better Assurance of the Executors, "That the Rents be
 " always hereafter employed and distributed to such Purpose
 " only, as by the said *John Freeman* was meant and intended," is a Proof of the Vanity of pretending to set aside the Will, by the Deed, and of the greater Vanity of pretending to set them both aside, by one single Word in the Deed, even if it was capable of the Sense, the Master has put upon it. The Words are,—"The Parties born, or
 " to be born in either of the two last mentioned Counties,
 " being found as fitt and worthy as Others as shall be Competitors with them for the Fellowships and Scholarships." The Word *Others*, the Master pretends, empowers the Fellows to make whom they please Competitors. It is very disagreeable, to enter upon a Grammatical Construction, or Sense of a Word depending upon it. If the Words had been, "The Parties born, or to be born in One of the two
 " last mentioned Counties," --or-- "in One or the Other of
 " the two last mentioned Counties," --Something might have *or in either County* been said. But--"The Parties born, or to be born in either
 " of the two last mentioned Counties"--can signify Nothing
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but the Parties born, or to be born in *Either* of the two last mentioned Counties, of which they are chosen. For *Either* of two, is which you chuse, and nothing else; and as Fit and Worthy as Others as shall be Competitors with them, is as Fit and Worthy as Others not chosen, not being *so* Fit and Worthy, at least not *more* Fit and Worthy. This is most certainly the only Even Grammatical Construction of these Words, for One of two, or One or the Other of two, is any One of two; but *Either* of two, is which you chuse, and nothing else. The Words themselves suppose a Choice of those born in *Either* of the two Counties, sometimes in One and sometimes in the Other, and require not only that One born in One of the two Counties, be constantly elected, but also that He be as Fit and Worthy as any one who can be found of the same County. So hard is it for Men to evade the true Intent and Meaning of a whole Deed and the whole Transaction to which it relates, that even an Attempt to do it, only discovers, that the Corruption of the Mind may be so great, as even to take away Mens Understanding, in what is most Plain and Evident to the Unprejudiced, or as to make them pretend not to Understand it.

3. The Practice of the College for the first Hundred Years, is so clearly against the Master, and Fellows, that in their Answer, they are forced to say; — “ They think it “ immaterial in what Manner former Elections have been “ made.”

4. There is an Affidavit ready to be produced, which is a Proof of the Present, then Deputy Master's Knowledge of the Will, the Date of it, and to what Effect in the Year 1724, when the Affidavit was made.

It has preserved an Account upon Oath by Whom, and by

by how many the Propriety was first taken away. A Deputy Master aged just Thirty, and four more Fellows much Younger; five, of a Society consisting of a Master and Sixteen Fellows, in the Vacance of a Fellowship.

The then Vice-Chancellor so readily accepting the Appeal made to Him, as Visitor (which was the Occasion of the Affidavit, as appears from the Affidavit itself) in the Absence of the Chancellor, and proceeding to the Election of two Doctors, is a Proof of his making no Doubt of his Jurisdiction, which had not indeed been ever questioned by the College.

The Extraordinary Proceeding of One of the Fellows making such a Deposition, against the Vice-Chancellor's Jurisdiction, to procure a Prohibition against it, as Visitor, never before questioned by the College, now submitted by the Master and Fellows to the Judgment of a Court, which is but little less than an Acknowledgment of it, and asserted, and made a Plea by Mr. *Talbot*, a Defendant in the same Suit; are suspicious Circumstances that something very bad had been done, which require so desperate a Defence.

5. The College going on for Twenty Years together in the same Course of denying the Propriety, and informing and making every one believe, as they had done a Court, as appears by Letters from four Vice-Chancellors ready to be produced, that the Vice-Chancellor had no Visitatorial Jurisdiction in the Case, seem to be Proofs how hard it is for Men, when they have once broken thro' all Rules and Obligations, ever to return to them again without being forced to it.

6. The College having now submitted it to the Court, whether They have a Visitor or not, and the Defendant

Talbot pleading his Jurisdiction in the strongest Terms, as appears by their Answers to an Information against them ready to be produced, seem to be like Proofs, that the Present Master and Fellows may be made to change their Minds and their Measures; for they had denied the Vice-Chancellor's Jurisdiction as confidently, as constantly, and as long as they have done the Propriety; denied the first, to defend what they had done with respect to the second, and by this Denial of the Vice-Chancellor's Jurisdiction as Visitor, had deterred all Scholars from challenging their Right, and prevailed upon the Vice-Chancellors themselves not to act, and thereby to take their Part, as forcing Schollars to be Plaintiffs against them as Visitors, who ought to be Defendants of their own Jurisdiction, or at least encourage Appellants to be so; or else forcing them to take some other Course.

7. It must be added as a Proof of the College's Resolution to persist in their Practice, that in their Answer they say,---

“ They did Elect *Thomas Jones*, born in *Cambridgeshire*,
 “ into a Fellowship on Mr. *Freeman's* Foundation, since the
 “ Election of *William Talbot*; that there being no Compe-
 “ titors, He was not examined; That they know not that
 “ any Notice was given to *Robert Mapletost*, or that He was
 “ put in Nomination with *Thomas Jones*.”

No Scholar can be a Competitor unless made so by a Fellow.

And thus lightly do this Master and Fellows think of this Matter, that if they put no one in Nomination or Competition, and do not let any of the Countymen know of a Vacancy of a Fellowship, they need not give themselves any Concern about the Will, or the Deed, or the Practice of the College for the first Hundred Years, but chuse whom they please

please without Examination. Such a Plenitude of Power has this College! which can deny the Visitor's Jurisdiction, procure a Prohibition against it, and by threatening to do it, again prevail upon Vice-Chancellors to give up their Visitatorial Jurisdiction, and then can plead his Jurisdiction against all the Courts in *Westminster-Hall*.

It must be the greatest Contempt of the Sense and Judgment of the Actors in it, which preserves such a Proceeding from the greatest Indignation against it; but even Contempt is no Reason for submitting to Injustice, Oppression, and Injuries which reach to many Persons, and which, if not Opposed, will be lasting and perpetual.

This Matter is here considered, only as a Right and as an Injury to those to whom it is denied, and not as a Crime in the Doers of it, of which it need only be said, that whatever has been done, has been under the Obligation of Solemn Oaths. If the Society is at all obliged to observe this Will and Indenture, the Obligation is bound upon them by Solemn Oaths. If the Vice-Chancellor is Visitor of the College in the Absence of the Chancellor, they are obliged by their Oaths to submit to his Jurisdiction, and the Denial of it is as much against their Solemn Oaths, as Rebellion in his Majesty's Subjects, who have sworn Allegiance to him, is against their Oaths. And it would be a Thing to be lamented, that a Disregard to Solemn Oaths, so much complained of as One of the great Corruptions of the present Times, should receive any Countenance from the Practice of a College.

It is a needless Inquiry, whether Proprieties do Harm or Good? It may be made of any Charitable Foundations, Colleges not excepted. This Propriety does indeed limit the Election, and a Worse may be chosen on that Account;

and so may a Better. The Present Master of *Clare-Hall*, it is hoped, is a Proof of this, who certainly was chosen, purely because of the Propriety, which excluded those, who would have been preferred before Him. The Question is general, Whether Wills are religiously to be observed, Constitutions to be accounted Sacred, and held inviolable, or every Thing given up to the Will or Pleasure, be it ever so well directed, of a Master and Fellows of a College?

As this is determined, so it must be, whether the Right to Mr. *Freeman's* Foundation ought to be given up, at best to the Conceitedness of a College? Whether it would not do Harm even to Colleges Themselves to be so humoured? Bring them into Contempt and make them Odious for doing such Things, and being become too powerful to be contended with?

And now the Reader's candid Judgment is intreated in Behalf of the Party Himself against the Master and Fellows of *Clare-Hall*. The Party was once Fellow of the College, resided in it near Twenty Years, was perfectly well acquainted with the Practice and Sense of It in this Matter, had lived in Friendship with Doctor *Laughton*, an Eminent Tutor in it, always promoted his Endeavours to make the College flourish, to which Its Continuance to do so to this Time, it is well known is chiefly owing. The Party had been the Means with Others, of making the Present Master, Fellow of it; from hence, both He and the College have derived their present Reputation and Character. Should this Person then have submitted to have his Right denied, to a Son allowed to have lively Parts, to have made good Proficiency in *Greek* and *Latin* Learning, and who had perform'd his publick Exercise with Reputation, had passed his Examination for his Degree with the Approbation of a Senior *Optime*,
and

and who had behaved himself soberly and regularly? Let the Question be, whether any Person in these Circumstances, should quietly submit to have such Injustice done to a Scholar of this Character? But farther ought the Party to have suffered the Scholar's Reputation, to be lessened and disparaged, after so good a Character had been given of Him? But above all should the Scholar be suffered to have Disaffection to the Government imputed to Him, not on Account of any Thing He had ever said or done, but as it were by a Descent of Character? This was certainly done, and it was made to be taken as the Whole of the Dispute with those who knew Nothing of the Party, and so brought it to be considered as a Party Business, and to be slighted as it would deserve to be, or espoused by those, who were disposed to be Friends to the College; while some of those who knew the Party were glad to see Him so used in a College they never liked, they knew not why; who liked the Party the worse for the sake of it, with as little Reason. Others who knew Him, would not believe he had been used Ill, where, if any where, He deserved Kindness and Respect, but believed the College acted out of a Sense of Duty because it was against Him, whom the Master had some Reason to shew Favour to, if the Son had not forfeited his Title to it. Thus has this Matter been managed, and thus has it succeeded, and now it has been all thus disclosed, it is supposed the Whole appears to have arisen from a Conceitedness in a College, inconsistent with their Obligations and their Oaths, hurtful to themselves and all such-like Societies, and highly Injurious to the Party concerned, and many Others, which had drawn the Society into the doing many Things, which they had Reason enough to desire to keep concealed.

Whatever Judgment the Reader may pass upon the Prudence of Resisting such Injustice and Oppression, with so
much

much Pains and Expence, the Party declares for Himself, that when He considers the Proceedings of the College, with Respect to the Right alone in General, he thinks any Thing ought to be undergone rather than to submit to it, even for the Sake of the Publick Good. But when he reflects upon what He has undergone, He thinks He would submit to any Thing rather than undergo it again.

For such have been the Difficulties the Master and Fellows of *Clare-Hall* have been able to raise against bringing this Cause to an Hearing, by doing Things incredible of Persons of their Character, and so abusing the Confidence Men are too prone to place in it, and taking their Advantage of some unhappy Circumstances of Times which, they have observed, dispose Men to place Trust in One another, without any Reason; and to make a Common Cause of what has no Relation to the Common Bond of Union among them, and which ought surely to be all laid aside in Questions of the Right, Property, and Liberty of the Subject (the Preservation of which is at least the pretended Bond of Union) that the Means may not destroy the End. The Writer draws this Reflection from what passed within Himself. He freely owns He could not have believed any College had done, what the Master and Fellows of *Clare-Hall* are here proved to have done. What drew Him into insisting on this Right was that He could not believe it would be denied, till He saw it done. He did not afterwards believe the Doing it was so entirely void of all Pretence and Shew of Reason for it, till he had gone to the Bottom of it; He could not believe the Vice-Chancellor would refuse to Act without calling for the Statutes, and judging for or against his Jurisdiction as Visitor, till four Vice-Chancellors did so; He could not believe there was so strong an Affidavit against the Vice-Chancellor's Jurisdiction as Visitor, till he found the Original in a
Court

Court of Record ; and last of all, least of all was it credible, after such an Affidavit against the Vice-Chancellor's Jurisdiction as Visitor, after four successive Vice-Chancellors peremptory Refusal to Act, as appears under their own Hands, that his Jurisdiction should be pleaded in the strongest Terms, upon common and received Practice, as well as upon the Statutes of the College against all the Courts of *Westminster-Hall* ; it is no Wonder such an Extraordinary Conduct should produce such Extraordinary Difficulties upon which the Appeal is now at last here made to the Tribunal of *Fame*, as well as upon the Merits of the Cause, now in its Fifth Year.

THE following AFFIDAVIT, mentioned among the STUBBORN-FACTS, is thought worth the Printing. The Contents give an Account of it.

HENRY HOPKINSON, Master of Arts, and Fellow of *Clare-Hall* in the University of *Cambridge*, maketh Oath, That *John Freeman*, late of *Great Billing*, in the County of *Northampton*, Esquire, deceased, did by his last Will and Testament, bearing Date on or about the 25th of *February* 1614, bequeath the Sum of 2000 l. to be laid out by his Executors in the Purchase of Lands, the Rents and Profits whereof should be employed and distributed towards the Relief and Maintenance of two Fellows, eight Scholars, and two poor Scholars, in the House or College called *Clare-Hall*, in the University of *Cambridge*, for ever; the further perfecting whereof he left to his said Executors, and thereby appointed Sir *Edward Georges*, and *Katherine* his Wife, Executors of his said Will. And this Deponent further saith, That by Indenture bearing Date on or about the first of *May*, 1622, and made between the Lord *Georges*, Baron of *Dundalk*, in *Ireland*, and the Lady *Katherine* his Wife, Executors of the said *John Freeman*, of the one Part, and the then Master, Fellows, and Scholars of *Clare-Hall*, of the other Part; divers Lands and Tenements were conveyed to the said Master, Fellows, and Scholars, by the said Executors, pursuant to the said Will. And it is thereby covenanted and agreed that after the Death of the said Executors,

cutors, the said Master, Fellows, and Scholars, and their Successors, should and might, from thenceforth, use the same or like Form of Nomination, Election, and Admission of meet and convenient Persons into each of the said Fellowships respectively, which should happen to be void; as before that Time the said Master, Fellows, and Scholars had usually done according to their Statutes and Ordinances of their said College in the Nomination, Election and Admission of the other Fellows respectively, which formerly had been maintained within the said College; saving always, that according to the Mind and true Intent of the said *John Freeman*, expressed in his said Will, they the said Master, Fellows, and Scholars should in such Nomination and Election principally respect such as were of the Kindred and Blood of the said *John Freeman*, to be first and before all Others preferred to such of the said two Fellowships as should happen to be void, If any of the Kindred and Blood of the said *John Freeman* should then be fit for those Fellowships, and in Case none of the Kindred or Blood of the said *John Freeman* should be fit for those Fellowships at the Time of the Vacancies of the same, then in the next Place those should be preferred who should be born in the County of *Northampton*, and in the third Place those that should be born in the County of *Lincoln*; The Parties born or to be born in either of these two last mentioned Counties being found as fit and worthy as Others which should be Competitors with them for the Fellowships, or to that or the like Effect. And this Deponent further saith, that according to the Statutes of the said *Hall*, upon the Election of Fellows the Master or his Deputy is to summons all the Fellows of the said *Hall* then in Town, to meet in the Chapel to proceed to an Election, and at the Time appointed the Candidate who has the Majority of Votes of the Master or Deputy Master and Fellows present is duly elected, and is to be

immediately declared elected by the Master or Deputy Master as soon after as conveniently may be. And this Deponent further saith, that about three Months since one of the Fellowships on Mr. *Freeman's* Foundation became Vacant, by Mr. *Wilcox* the then Fellow accepting another Fellowship in the said *Hall*, on the Old Foundation, whereupon the Deputy Master of the said *Hall* gave due Notice to all the Fellows then in Town, of the Time of proceeding to the Election of another Fellow into the place of the said Mr. *Wilcox*; and at the Time appointed by such Notice there appeared in the Chapel six Fellows of the College, (viz.) *John Wilcox*, the Deputy Master, *Henry Hopkinson*, *Thomas Howes*, *Thomas Curling*, *John Ferrar*, and ----- *Hodgson*; and the said Deputy Master then proceeding to an Election, there were only two Candidates voted for, viz. *Nich. Nicholes*, Batchelor of Arts, and *Thomas Falkner*; and the said *Nicholas Nicholes* had five Votes out of the six, all but the said ----- *Hodgson*, and was thought by those five most fit and worthy to succeed to the said Fellowship; whereupon the said *John Wilcox* the then Deputy Master, then and there declared the said *Nicholas Nicholes* duly elected. Whereupon the said *Thomas Falkner* hath, as this Deponent is informed and believes, appealed to the Vice-Chancellor of *Cambridge*, and the said Vice-Chancellor on *Friday* the first of this Instant *May*, at a Congregation then holden in the said University, upon an Appeal made to him about the said Election, appointed the then next *Friday* to chuse two Doctors of the University to be Assistants to the Vice-Chancellor, in proceeding to Hear, Examine, and Determine about the said Election as this Deponent hath been informed and believes. And this Deponent further saith, that neither the Vice-Chancellor nor the Doctors of the said University, have, as this Deponent is informed and believes, any Power or Authority whatsoever to Visit the said *Hall* to correct, alter, or regulate
any

any Matters whatsoever, touching the said Election of the said Fellows on Mr. *Freeman's* Foundation,----nor any ways to intermeddle therewith.

*Jurat. Octavo Die
Maii, 1724.*

HENRY HOPKINSON.

This Affidavit was made on the very Day appointed by the Vice-Chancellor to chuse two Doctors to be his Assistants in hearing the Appeal, being a *Friday*. On the *Monday* after a Rule of Court was granted for the Vice-Chancellor to shew Cause why a Prohibition should not be granted against his Proceeding on the Appeal; which was served upon him Time enough to put a Stop to it. And neither the Vice-Chancellor nor the Appellant being willing to be at Charges of Law, a final End was put to the Appeal. Thus did the College make themselves Plaintiffs against the Visitor's Jurisdiction.-----When they were Defendants in the present and perfectly similar Case, concerning Mr. *Freeman's* Foundation, the Chancellor's or Vice-Chancellor's Jurisdiction was submitted to the Court, and made a Plea against it by Mr. *Talbot* a Joint Defendant with the College; the Rev. Dr. *Wilcox* being the principal Plaintiff in the one Suit as Deputy Master, and principal Defendant in the other as Master of the College.

F I N I S.



